

JPA File No.: 06-132 I  
AG Contract No.: KR07-0515TRN  
Project: Intersection (pedestrian)  
Improvements  
Section: Pima Street @ Martin Ave  
(SR 85)  
TRACS No.: HF141 01C  
Budget Source Item No.: HURF

## INTERGOVERNMENTAL AGREEMENT

BETWEEN  
THE STATE OF ARIZONA  
AND  
TOWN OF GILA BEND

**THIS AGREEMENT** is entered into this date June 18<sup>th</sup>, 2007, pursuant to the Arizona Revised Statutes § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the TOWN OF GILA BEND, acting by and through its MAYOR and TOWN COUNCIL the ("Town"). The State and the Town are collectively referred to as "Parties".

### I. RECITALS

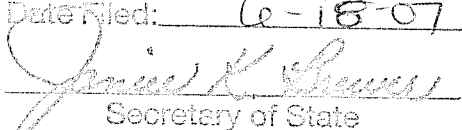
1. The State is empowered by Arizona Revised Statutes § 28-334 and § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

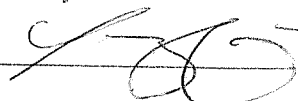
2. The Town is empowered by Arizona Revised Statutes § 48-572 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the Town.

3. The State has approved the exchange of Highway User Revenue Funds (HURF) pursuant to the amounts and schedule shown in column D of the table below for constructing pedestrian improvements at the intersection of Martin Ave & Pima Street (SR 85), hereinafter referred to as the "Project." Such funds shall be repaid to the State by withholding from the Maricopa Association of Governments (MAG) Federal Apportionment and corresponding Obligation Authority as shown in column B and C in the table below. All such transactions to be made in accordance with the schedule shown in column A.

**THEREFORE**, in consideration of the mutual covenants expressed herein, it is agreed as follows:

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NO. 28984  
Filed with the Secretary of State  
Date Filed: 6-18-07  
  
Secretary of State

By: 

<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>
Federal Fiscal Year to be Processed	STP Apportionment to be Charged to MAG	STP Obligation Authority to be Charged to MAG	90 %HURF Funds to be Transferred to Town

**Construction**

FFY 2007	\$218,869.00	\$188,600.00	\$169,740.00
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**II. SCOPE OF WORK**

## 1. The Town shall:

a. Provide design plans, specifications and other such documents and services required for construction bidding and construction of pedestrian improvements at the intersection of Martin Ave & Pima Street (SR 85) to the State prior to advertisement of the Project. The State's Local Government Section will then verify the work and location meet the requirements for HURF exchange.

b. Advertise for bids and award one or more construction contracts for the Project. Administer contracts for the project and make all payments to the contractor(s). Be responsible for any contractor claims for extra compensation due to delays or whatever reason attributable to the Town. Comply with all applicable State Laws, Rules and Regulations.

c. Invoice the State for thirty percent (30%) of the total programmed HURF funds found above in Column D upon award of the construction. Total payment by the State to the Town shall not exceed the amounts shown in column D above for the Federal Fiscal Year 2007 in which the billing is made.

d. Invoice the State for an additional thirty percent (30%) of the total programmed HURF funds when the Project reaches the thirty percent (30%) completion stage. Total payments by the State to the Town shall not exceed the amounts shown in column D above for the Federal Fiscal Year 2007 in which the billing is made, plus any carryover amounts not previously paid in prior years.

e. Invoice the State for an additional thirty percent (30%) of the total programmed HURF funds when the Project reaches the sixty percent (60%) completion stage. Total payments by the State to the Town shall not exceed the amounts shown in column D above for the Federal Fiscal Year 2007 in which the billing is made, plus any carryover amounts not previously paid in prior years.

f. Upon satisfactory completion of construction, approve and accept the Project on behalf of the Town and at its own expense, provide for maintenance. After the final close out Field Review, provide the State with a letter documenting the notice of the approval and acceptance of the project.

g. Prior to invoicing the State for the remaining ten percent (10%) of the Project costs, coordinate with the State on a final field inspection to make certain the Project has been satisfactorily completed and accepted by the Town. Total payments by the State to the Town shall not exceed the amounts shown in column D above for the Federal Fiscal Year 2007 in which the billing is made, plus any carryover amounts not previously paid in prior years.

2. The State shall:

a. Charge MAG STP Apportionment in the amount of \$218,869.00 and MAG Obligation Authority in the amount of \$188,600.00 for construction of pedestrian improvements at the intersection of Martin Ave & Pima Street (SR 85).

b. Within thirty-days (30) after receipt and approval of invoices at construction award, and also the thirty (30%) and sixty percent (60%) construction completion stages, advance the Town HURF funds in the amount of 30% at each invoiced stage of construction.

c. Coordinate with the Town on a final field inspection to make certain the Project has been satisfactorily completed and accepted by the Town. Within 30 days after receipt and approval of the final invoice, remit to the Town HURF Funds or the remaining ten percent (10%) of \$169,740.00 for construction of pedestrian improvements at the intersection of Martin Ave & Pima Street (SR 85).

### **III. MISCELLANEOUS PROVISIONS**

1. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of said project, except any provisions for maintenance shall be perpetual, unless assumed by another competent entity. Further, this Agreement may be canceled at any time prior to the award of the project construction contract, upon 30 days written notice to the other party. It is understood and agreed that in the event the Town cancels this Agreement, the State shall in no way be obligated to maintain said project.

2. The State assumes no financial obligation or liability under this Agreement, or for any resulting construction Project. The Town assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. The Town shall require its contractors to name the State and ADOT as an additional insured in the contractor's policies. The Town shall also require its contractors to name the State and ADOT as an additional indemnitee in the Town's contracts with its contractors. It is understood and agreed that the State's participation is confined solely to advancing Highway User Revenue Funds; that any damages arising from carrying out, in any respect, the terms of this Agreement or any modification thereof, shall be solely the liability of the Town and that to the extent permitted by law the Town hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, misrepresentation, directives, instruction or event arising out of the performance or nonperformance of any provisions of this Agreement by the State, any of its departments, agencies, officers and employees, the Town, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, and expenses of litigation and attorneys' fees.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be cancelled in accordance with Arizona Revised Statutes § 38-511.

5. The provisions of Arizona Revised Statutes § 35-214 are applicable to this Agreement.

6. In the event of any controversy, which may arise out of this Agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

7. This Agreement is subject to all applicable provisions of the Americans with Disability Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4

issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

8. Non-Availability of Funds: Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised, and the State shall not be obligated or liable for any future payments as a result of termination under this paragraph.

9. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 S. 17<sup>th</sup> Avenue, Mail Drop 616E  
Phoenix, Arizona 85007  
(602) 712-7525  
(602) 712-7424 Fax

Town of Gila Bend  
Attn: Town Manager  
644 West Pima Street  
Gila Bend, Arizona 85337  
(928) 683-2255  
(928) 683-6430 Fax

10. In accordance with Arizona Revised Statutes § 11-952 (D) attached hereto and incorporated herein is the written determination of each party's legal counsel and that the parties are authorized under the laws of this State to enter into this Agreement and that the Agreement is in proper form.

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IN WITNESS WHEREOF, the Parties have executed this Agreement the day and year first above written.

**TOWN OF GILA BEND**

By   
DANIEL BIRCHFIELD  
Mayor

**STATE OF ARIZONA**

Department of Transportation

By   
DALE BUSKIRK  
Division Director

ATTEST:

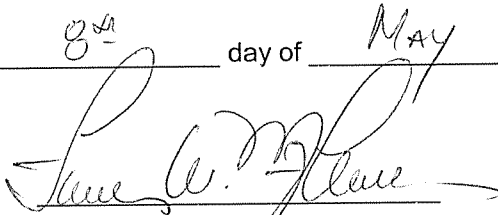
By   
BEVERLY TURNER  
Town Clerk

ATTORNEY APPROVAL FORM FOR THE TOWN OF GILA BEND

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and the TOWN, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-951 through § 11-954 and declare this Agreement to be in proper form and within the powers and authority granted to the TOWN under the laws of the State of Arizona.

No opinion is expressed as to the authority of the State to enter into this Agreement.

DATED this 8<sup>th</sup> day of May, 2007.

  
Town Attorney

## TOWN OF GILA BEND

Minutes of the May 8, 2007, regular Council meeting

### I. CALL TO ORDER

- A. Mayor Birchfield called the meeting to order at 6:00 p.m.
- B. Pledge of Allegiance was led by Mayor Birchfield.
- C. Invocation was given by Steve McClure.

### II. ROLL CALL


- A. Mayor Daniel Birchfield
- B. Vice-Mayor Steve Holt - arrived at 6:02 pm
- C. Council Member Ron Henry
- D. Council Member Fred Hull
- E. Council Member Will Sipes
- F. Council Member James "Bud" Turner - arrived at 6:13 pm
- G. Council Member Donny Young - arrived at 6:59 pm

### III. WORK SESSION

- A. Retail Recruiting Program- Mr. Robert Belcher with the Buxton Company presented a handout which gave an overview of the Retail Recruiting Program. He explained that the program helps municipalities identify potential retail companies. He advised that the Buxton Company would perform a small cities ID and provide 10 retailers including contact information for a cost of approximately \$18,500. There was a question as to references and it was noted that the Buxton Company is currently working with El Mirage, Oro Valley and Safford. Mr. Belcher noted that Buxton Company does not do marketing, they just provide the tools. (Handout is made part of the official minutes)
- B. Union Pacific switch yard - Mayor Birchfield introduced Clancy Jayne. Mr. Jayne spoke about his relationship with Harrison Merrill and the perfect location for the Union Pacific switch yard would be Mr. Merrill's property located south of I-8. He indicated that he would like to present an alternate location to Union Pacific other than the Picacho site which he advised is tainted. Mr. Jayne also advised that the Town has a 50-50 chance at best of enticing Union Pacific to locate the switch yard in Gila Bend and that he would like to present the Gila Bend location on behalf of the Town of Gila Bend. There was a brief review of the draft agreement and a question was asked if the first step should be to find out why Picacho is against the switch yard. Mr. Jayne advised that the \$5,000 fee for his services may not be enough but he will provide the Town with an answer as to whether or not Union Pacific would consider Gila Bend an alternate site for the switch yard. It was the consensus of the Council that staff move forward in preparing an agreement with Mr. Jayne to pursue the potential location of the switch yard in Gila Bend. (Mr. Jayne's handout is made part of the official minutes.

### IV. BUSINESS

- A. Approval of the April 24 and May 2, 2007 meeting minutes. Council Member Hull moved to approve the April 24 and May 2, 2007 meeting minutes noting a clerical error in the April 24th minutes regarding the mis-spelling of the word sports under Item III. Seconded by Council Member Turner. Motion passed unanimously.

- B. Approval of Community Facilities District Application submitted by Vanguard Properties, Inc. Council Member Hull moved to approve the Community Facilities District Application submitted by Vanguard Properties, Inc. Second by Council Member Turner. Town Manager Farmer advised that the approval of the application is the next step in forming the CFD. Council Member Hull noted several clerical errors. It was also noted that Gila Bend Road should be Gila Boulevard. There was a question about who pays if the cost exceeds \$100,000, and it was advised that the cost should never exceed \$100,000. Motion passed unanimously.
- C. RESOLUTION 07-04, a resolution of the Town Council of the Town of Gila Bend, Arizona, pertaining to the submission of projects for consideration in Arizona's 2007 Highway Safety Plan. Motion to approve Resolution 07-04 was made by Council Member Henry and seconded by Council Member Hull. Fire Chief Birchfield advised that Council passed Resolution 06-03 that approved the submission of projects for 2007 and that Resolution 07-04 that they are considering should reflect year 2008. Council Member Henry amended his motion to reflect changing the year 2007 to 2008. Council Member Hull seconded the amendment. Amended motion passed unanimously.
- D.  Approval of Intergovernmental Agreement with the State of Arizona, Department of Transportation for pedestrian improvements at the intersection of Martin Ave. and Pima Street. Council Member Hull moved to approve the Intergovernmental Agreement with the State of Arizona, Department of Transportation for pedestrian improvements at the intersection of Martin Ave. and Pima Street. Seconded by Council Member Sipes. Town Manager Farmer advised that the project will begin at the stated intersection and funded through ADOT by way of a HURF grant. Motion passed unanimously.
- E. Acceptance of Terminal Area security lighting and Runway 4/22 PAPI Installation project at the Gila Bend Municipal Airport. Council Member Turner moved to accept the Terminal Area security lighting and Runway 4/22 PAPI Installation project at the Gila Bend Municipal Airport. Seconded by Council Member Henry. Motion passed unanimously.
- V. CALL TO THE PUBLIC
- A. None
- VI. TOWN MANAGER REPORT
- A. Town Manager Farmer reported the following:
- 5-7-07 Met with Greg Swartz, Ron Schrier and Allan O'brien to discuss creating Master Plans for the Town's water, wastewater and transportation.
  - 5/17/07 Luke West Valley Council meeting
  - 5/21/07 Meeting with Arizona Corporation Commission regarding Union Pacific Railroad
  - 5/28/07 Memorial Day Celebration
- Bella Tesoro development will present their project to the Planning Commission on May 10<sup>th</sup>
- VII. MCSO REPORT
- A. None

## VIII. REPORTS BY OFFICERS

- A. Council Member Hull reported that ambulance calls are down and reminded everyone to vote next Tuesday.
- B. Mayor Birchfield reported that he attended the Rotary Scholarship Banquet and also commended them for their work in the Park.

## IX. ADJOURNMENT

Meeting adjourned at 7:00 p.m.

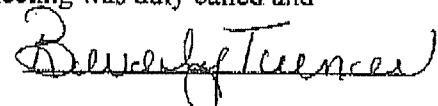
Respectfully submitted,

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Beverly Turner, CMC  
Town Clerk


## CERTIFICATION:

I hereby certify that the foregoing minutes are a true and correct copy of the regular meeting held May 8, 2007, and the meeting was duly called and posted and that a quorum was present.



Beverly Turner, CMC  
Town Clerk



<p>TERRY GODDARD Attorney General</p>	<p> <b>OFFICE OF THE ATTORNEY GENERAL</b> STATE OF ARIZONA</p>	<p>CIVIL DIVISION TRANSPORTATION SECTION Writer's Direct Line: 602.542.8855 Facsimile: 602.542.3646 E-mail: Susan Davis@azag.gov</p>
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**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR07-0515TRN (**JPA 06-132-I**), an Agreement between public agencies, i.e., The State of Arizona and Town of Gila Bend, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: June 11, 2007

TERRY GODDARD  
Attorney General

  
SUSAN E. DAVIS  
Assistant Attorney General  
Transportation Section

SED:mjf:13413  
Attachment